

### **Remarks/Arguments**

Applicants have received and carefully reviewed the Final Office Action of the Examiner mailed December 26, 2007. Currently, claims 1, 2, 4-12, 14-16, 18-26, 28, and 29 remain pending. Claims 1, 2, 4-12, 14-16, 18-26, 28, and 29 have been rejected. Claims 1, 15, and 29 have been amended. Favorable consideration of the following remarks is respectfully requested.

#### ***Finality of Office Action***

Applicant respectfully asserts that the finality of the current Office Action is premature and respectfully requests withdrawal of the finality. The Notice of Panel Decisions from Pre-Appeal Brief Review mailed on November 2, 2007 indicated that the rejection is withdrawn and a new Office Action will be mailed. In the current Final Office Action, the Examiner has rejected claims 1, 2, 4-12, 14-16, 18-26, 28, and 29 with a new rejection. According to MPEP § 1211.01, after a remand by the board, the Applicant can:

(A) Reopen prosecution. Request that prosecution be reopened before the examiner by filing a reply under 37 CFR 1.111 with or without amendment or submission of affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence.

(Emphasis added). 37 CFR 1.111 is titled “Reply by applicant or patent owner to a non-final Office action”. As such, it is believed that when prosecution is reopened after the Pre-Appeal Brief Request for Review, Applicant should receive a non-final Office Action. As such, it is believed that the finality of the current Final Office Action is premature, and as such, Applicants respectfully request that the Finality of the current Final Office Action be withdrawn.

#### ***Claim Rejections – 35 USC § 103***

In paragraph 4 of the Final Office Action, claims 1, 2, 4-12, 15, 16, 18-26, and 29 were rejected under 35 U.S.C. 103(a) as being unpatentable over Boyle et al. (U.S. Publication No. 2003/0004537) in view of Dubrul et al. (U.S. Patent No. 6,221,006) and Daniel et al. (U.S. Patent No. 6,245,089). After careful review, Applicant must respectfully disagree.

Turning to claim 1, which recites:

1. (Currently Amended) A medical device for retrieving an intravascular device from a body lumen, comprising:  
an elongated shaft member having a proximal section and a flared distal section;  
a braided member having a proximal portion and a distal portion, the

proximal portion of the braided member coupled to the distal section of the elongated shaft member and the distal portion of the braided member extending distally of a distal end of the elongate shaft member, the braided member including a plurality of filaments and defining a radially expandable inner lumen configured to receive and encapsulate the intravascular device therein;  
wherein said plurality of filaments are configured to radially expand when axially compressed; and  
an embolic protection filter including a filter membrane coupled to a proximal support hoop, the support hoop defining a proximally facing opening of the embolic protection filter, the embolic protection filter having a first position, wherein the proximally facing opening is distal of the braided member, and a second position, wherein the proximally facing opening is within at least a portion of the radially expandable inner lumen of the braided member.

Nowhere does the combination of Boyle et al., Dubrul et al., and Daniel et al. appear to teach or suggest “a braided member having a proximal portion and a distal portion, the proximal portion of the braided member coupled to the distal section of the elongated shaft member and the distal portion of the braided member extending distally of a distal end of the elongate shaft member”, as recited in claim 1.

Instead, Boyle et al. appears to teach or suggest a sheath 92 including a coil spring 94 or ring member 104 embedded in the sheath 92 to provide elasticity needed to expand the housing portion 90 when needed. The coil can be permanently set into the material forming the sheath or it could be attached to the outside or inside surface of the sheath. (See paragraphs 0058-0059). Nowhere does Boyle et al. appear to teach or suggest a braided member, acknowledged by the Examiner, or a distal portion of the spring coil or ring member extending distally of the distal end of the elongate shaft member.

In the Final Office Action, the Examiner asserts that it would be obvious to substitute a known element for another to yield predictable results. Thus, it would be obvious to substitute the coil or ring of Boyle et al. with the braided member taught by Dubrul et al. However, as discussed above and as clearly shown in Figures 8-13 of Boyle et al., nowhere does Boyle et al. appear to teach or suggest the coil spring 94 or the ring member 104 having a distal portion extending distally of a distal end of the elongate shaft member. A mere substitution of the spring coil for the braided member of Dubrul et al. would not appear to result in the claimed configuration. Furthermore, nowhere do the references appear to provide any motivation or reason for such a modification. Therefore, for at least these reasons, claim 1 is believed to be patentable over Boyle et al. in view of Dubrul et al. and Daniel et al.

For similar reasons, claims 2 and 4-12, which depend from claim 1, are believed to be patentable over Boyle et al. in view of Dubrul et al. and Daniel et al.

Turning to claim 15, which recites:

15. (Currently Amended) A medical device for retrieving an intravascular device from a body lumen, comprising:  
an elongated shaft member having a proximal section and a flared distal section;  
a braided member having a proximal portion and a distal portion, the proximal portion of the braided member coupled to the distal section of the elongated shaft member and the distal portion of the braided member extending distally of a distal end of the elongate shaft member, the braided member including plurality of filaments and defining a radially expandable inner lumen configured to receive and encapsulate the intravascular device therein;  
an elastomeric jacket encasing at least part of said braided member; and  
an embolic protection filter including a filter membrane coupled to a proximal support hoop, the support hoop defining a proximally facing opening of the embolic protection filter, the embolic protection filter having a first position, wherein the proximally facing opening is distal of the braided member, and a second position, wherein the proximally facing opening is within at least a portion of the radially expandable inner lumen of the braided member.

As discussed previously, nowhere does the combination of Boyle et al., Dubrul et al., and Daniel et al. appear to teach or suggest “a braided member having a proximal portion and a distal portion, the proximal portion of the braided member coupled to the distal section of the elongated shaft member and the distal portion of the braided member extending distally of a distal end of the elongate shaft member”, as recited in claim 15. Therefore, for at least these reasons, claim 15 is believed to be patentable over Boyle et al. in view of Dubrul et al. and Daniel et al.

For similar reasons, claims 16 and 18-26, which depend from claim 15, are believed to be patentable over Boyle et al. in view of Dubrul et al. and Daniel et al.

Turning to claim 29, which recites:

29. (Currently Amended) A medical device for retrieving an intravascular device from a body lumen, comprising:  
an elongated shaft member having a proximal section and a flared distal section;  
a braided member having a proximal portion and a distal portion, the proximal portion of the braided member coupled to the distal section of the elongated shaft member and the distal portion of the braided member extending distally of a distal end of the elongate shaft member, the braided member including plurality of filaments arranged in two sets of parallel helices wound in

opposite directions about a common longitudinal axis and defining a radially expandable inner lumen configured to receive and encapsulate the intravascular device therein;

an elastomeric jacket encasing at least part of said braided member; and  
an embolic protection filter including a filter membrane coupled to a proximal support hoop, the support hoop defining a proximally facing opening of the embolic protection filter, the embolic protection filter having a first position, wherein the proximally facing opening is distal of the braided member, and a second position, wherein the proximally facing opening is within at least a portion of the radially expandable inner lumen of the braided member.

As discussed previously, nowhere does the combination of Boyle et al., Dubrul et al., and Daniel et al. appear to teach or suggest “a braided member having a proximal portion and a distal portion, the proximal portion of the braided member coupled to the distal section of the elongated shaft member and the distal portion of the braided member extending distally of a distal end of the elongate shaft member”, as recited in claim 15. Therefore, for at least these reasons, claim 29 is believed to be patentable over Boyle et al. in view of Dubrul et al. and Daniel et al.

In paragraph 5 of the Final Office Action, claims 14 and 28 were rejected under 35 U.S.C. 103(a) as being unpatentable over Boyle et al. in view of Dubrul et al. and Daniel et al. and further in view of Anderson et al. (U.S. Publication No. 2002/0188314). After careful review, Applicant must respectfully disagree. For similar reasons given above, claims 1 and 15 are believed to be patentable over Boyle et al., Dubrul et al., and Daniel et al., and nowhere does Anderson et al. appear to overcome the shortcomings Boyle et al., Dubrul et al., and Daniel et al. Because claims 14 and 28 depend from claim 1 and 15, respectively, as well as other reasons, claims 14 and 28 are believed to be patentable over Boyle et al. in view of Dubrul et al. and Daniel et al., and further in view of Anderson et al.

### ***Conclusion***

In view of the foregoing, all pending claims are believed to be in a condition for allowance. Reexamination and reconsideration are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

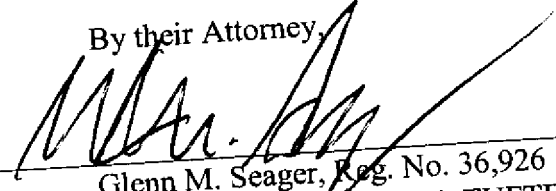
Respectfully submitted,

Amr Salahieh et al.

By their Attorney,

Date:

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Glenn M. Seager, Reg. No. 36,926  
CROMPTON, SEAGER & TUFTE, LLC  
1221 Nicollet Avenue, Suite 800  
Minneapolis, Minnesota 55403-2420  
Tel: (612) 677-9050